STATE OF CALIFORNIA GAVIN NEWSOM, Governor

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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July 26, 2023

Agenda ID #21765
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 22-04-010:

This is the proposed decision of Administrative Law Judge Brian Stevens. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's August 31, 2023 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ MICHELLE COOKE
Michelle Cooke
Acting Chief Administrative Law Judge

MLC:jnf
Attachment

Decision **PROPOSED DECISION OF ALJ STEVENS (Mailed 7/26/2023)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Extension of Waiver of Capital Structure Rule.	Application 22-04-010

DECISION AUTHORIZING SOUTHERN CALIFORNIA EDISON COMPANY'S REQUEST FOR AN EXTENSION OF THE PREVIOUSLY AUTHORIZED CAPITAL STRUCTURE WAIVER

Summary

This decision approves Southern California Edison Company's (SCE) application for an extension of its existing waiver of Affiliate Transaction Rule IX.B, which requires the major energy utilities to maintain their authorized capital structure requirement on average over the period the capital structure is in effect for ratemaking purposes. SCE's waiver extension is approved for two years from issuance of this decision or until the Commission makes a final determination on SCE cost recovery for costs stemming from 2017 and 2018 wildfires in its service territory and the Montecito Mudslide, whichever comes first.

The proceeding is closed.

1. Background

1.1. Procedural Background

Southern California Edison Company (SCE) filed this Application on April 20, 2022. In this Application, SCE seeks to extend the two-year waiver of its capital structure requirement that was first approved in Decision (D.) 20-05-005.

SCE served supporting testimony concurrently with this Application. No party protested this Application. A prehearing conference was held in this proceeding on July 6, 2022; this prehearing conference also addressed the 2023 triennial request to establish its capital structure and cost of capital of SCE and three other electric and gas investor-owned utilities.[1] A scoping ruling was issued on September 8, 2022. SCE is the only party to this proceeding, and this Application remains uncontested. This proceeding was submitted on June 22, 2023.

1.2. Factual Background

The Commission adopts triennial updates to the capital structure and costs of capital authorizations granted to the gas and electric investor-owned utilities; interim updates may occur if particular criteria is met as well. The most recent update to SCE's capital structure and cost of capital, for test-year 2023 lasting through 2025, was adopted in D.22-12-031. In that decision, the Commission adopted a capital structure for SCE comprised of 52.00% common equity, 5.00% preferred equity, and 43.00% long-term debt. In that decision the Commission also adopted a cost of capital rate of return for SCE of 7.44%.[2]

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[1] The July 6, 2022 prehearing conference addressed Application (A.) 22-04-008, A.22-04-009, the instant Application, A.22-04-011, and A.22-04-012. The other four Applications were consolidated, and an initial decision (Decision 22-12-031) was issued in that consolidated proceeding on December 15, 2022.

[2] D.21-12-031 at Ordering Paragraph 2.

D.96-11-017 required Pacific Gas and Electric Company (PG&E) to maintain its authorized capital structure on average over the period the capital structure is in effect for ratemaking purposes. D.96-11-017 further required PG&E to file an application for a waiver of this requirement, on a case-by-case basis and in a timely manner, if an adverse financial event reduces the utility's equity ratio by one percent or more. D.06-12-029 updated the Commission's Affiliate Transaction Rule IX.B (Rule IX.B)[3] to also adopt these two requirements for other major electric and gas investor-owned utilities, including SCE.

2. Issues Before the Commission

- Should SCE be authorized to continue to waive Rule IX.B of the affiliate transaction rules?
- If an extension is granted, what is the time limitation of the extension of the waiver of the capital structure rule?
- Should SCE be authorized to exclude debt from its calculation of the regulatory equity ratio that exceeds the net charges due to the timing difference between the wildfire claims payment and the realization of the cash tax benefits?

3. 2019 SCE Capital Structure (CS) Waiver Application and the CS Waiver Decision

SCE sought the initial capital structure waiver, related to these triggering events, on February 2, 2019 when it filed Application 19-02-017, *Application for Approval of Waiver of Capital Structure Rule* (2019 Capital Structure Waiver Application). In the 2019 Capital Structure Waiver Application, SCE requested a waiver of the capital structure requirements, pursuant to D.06-12-029, related to the net charges associated with the December 2017 Thomas Fire in Ventura County, the subsequent 2018 Montecito Mudslides in Santa Barbara

[3] D.06-01-029 at Appendix A-3, Rule IX.B, Page 32.

County, and the 2018 Woolsey wildfire in Los Angeles and Ventura Counties (2017 and 2018 events).

On May 7, 2020, the Commission issued D.20-05-005 (2020 CS Waiver Decision) that granted SCE's request "for a waiver from the capital structure requirement set forth in Affiliate Transaction Rule IX.B [a]s approved for current and future charges net of credits stemming from the 2017 and 2018 wildfire and mudslide events and debt issuance for the purpose of paying claims related to the 2017 and 2018 wildfire and mudslide events to the extent that they are equal to or less than the aggregate net charges for two years from issuance of this decision or until the Commission makes a determination on SCE cost recovery for the 2017 and 2018 events, whichever comes first."[4]

That decision found that "SCE reported $1.8 billion in net non-cash charges to the [Security and Exchange Commission (SEC)] in its 10-K filing on February 28, 2019 stemming from the December 2017 Thomas Fire in Ventura County, the 2018 Woolsey wildfire in Los Angeles and Ventura County, and the subsequent 2018 Montecito Mudslides in Santa Barbara Country."[5] Additionally, "SCE's total non-cash charges stemming from the 2017 and 2018 events could increase, or potentially decrease, over time depending on a variety of variables."[6] Further that decision found that "[a] temporary waiver of SCE's capital structure requirement will not harm the public or SCE customers because the non-cash charges reported to the SEC do not impact how SCE's existing assets are financed."[7] Additionally, "SCE issuance of debt up to the level of any

[4] D.20-05-005 Ordering Paragraph 2.

[5] D.20-05-005 at Finding of Fact 13.

[6] D.20-05-005 at Finding of Fact 14.

[7] D.20-05-005 at Finding of Fact 15.

net non-cash charges for the 2017 and 2018 events may be excluded from calculation of its regulatory equity ratio during the waiver period without harming ratepayers because such debt will not be used to finance assets in the rate base."[8]

The 2020 CS Waiver Decision also found that "To effectuate its waiver, it is reasonable for SCE to exclude, for purposes of calculating compliance with Rule IX.B, the $1.8 billion net charge reported by SCE to the SEC on February 28, 2019, future charges net of credits stemming from the 2017 and 2018 events, and debt issuance for the purpose of paying claims stemming from the 2017 and 2018 events to the extent that the debt amount is equal to or less than the aggregate net non-cash charges." The Commission also found that "[t]his exclusion is not intended to supersede or modify any other exclusions from SCE's ratemaking capital structure authorized in prior Commission decisions."[9]

4. Extension of the CS Waiver

4.1. SCE's Requested Extension

In the instant Application, SCE seeks to extend the waiver of its capital structure requirement that was adopted in the CS Waiver Decision.

The CS Waiver Decision indicated that "[i]f the Commission has not made a determination regarding SCE cost recovery for the 2017 and 2018 events within two years of issuance of this decision, SCE should file another application for a waiver from its capital structure pursuant to Rule IX.B."[10] SCE notes in the instant Application that it has yet to file an Application for cost recovery for the

[8] D.20-05-005 at Finding of Fact 16.

[9] D.20-05-005 at Finding of Fact 16.

[10] D.20-05-005 at 17-18.

costs related to the 2017 and 2018 events, and thus a Commission determination has yet to be made.

Here, SCE seeks to extend the limited waiver of Rule IX.B, so that it may exclude the existing and future net charges to its common equity associated with 2017 and 2018 events and associated debt until the Commission resolves, in a final and non-appealable decision, the last of SCE's wildfire cost recovery requests for the 2017 and 2018 events. SCE requests that it would have ninety (90) days to submit an advice letter stating that it has returned to its authorized capital structure, or, in the alternative if applicable, SCE shall file an application proposing a plan and timeframe over which SCE will return its capital structure to the level most recently approved by the Commission at that time. SCE proposes to eliminate the requirement that SCE file an application if a Commission cost recovery determination has not been made within two years of the decision; instead, SCE proposes that the waiver remain in place until such time as all cost recovery matters associated with the 2017 and 2018 events are fully resolved.

4.2. SCE's Arguments for Good Cause for Extending the Waiver

SCE argues that it has good cause for not yet filing for cost recovery of the claims related to the 2017 and 2018 events. SCE notes that it has been named as a defendant in multiple lawsuits related to the 2017 and 2018 events, and SCE expects to be the subject of additional lawsuits related to the 2017 and 2018 events. SCE additionally notes that litigation and settlement efforts will take more time to resolve because of the number of plaintiffs and the complexity of the issues. SCE indicated that it will file one or more applications with the Commission to seek recovery at the appropriate time.

SCE argues that the waiver extension is reasonable and in the interest of its customers. SCE notes that "depending on the outcome of wildfire litigation and the Commission's cost recovery proceedings, SCE could end up with equity that is not needed and that will be expensive to redeem."[11] SCE further argues that "requiring new equity now would be premature, given that SCE will not know if the net charges will become a permanent reduction to our equity. Financing the wildfire claims pending resolution of cost recovery and separate from the financing of rate base is prudent as it lowers the financing costs and complexities until a final determination on cost recovery is made."[12]

SCE argues that "in the interim, this waiver provides the CPUC continued visibility over SCE's capital structure compliance, while avoiding premature, uneconomic capital balancing to address contingent wildfire liabilities when cost recovery has yet to be determined."[13]

4.3. The 2020 CS Waiver Decision's Two-Year Limitation

In SCE's initial request, it requested that the waiver remain in place "until the CPUC determines SCE's wildfire cost recovery."[14] SCE's request was that at the point that the Commission determines the appropriate cost recovery, it would "submit another filing to address the impact of such determination on its equity ratio and to propose any further actions that may be appropriate at that time in respect of SCE's equity ratio."[15]

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[11] Application at 9.

[12] Application at 9.

[13] Application at 9.

[14] Application 19-02-017 at 10.

[15] Application 19-02-017 at 10.

Numerous parties intervened in that proceeding, although none specifically advocated to put a time limitation on the duration of the waiver. Ultimately, the Commission determined that a time limited capital structure waiver of two years was appropriate with direction for SCE to file an additional Application if it seeks to extend the capital structure waiver beyond two years from the issuance of the CS Waiver Decision.

In this Application, SCE proposes to "eliminate the requirement that SCE file an application if a Commission cost recovery determination has not been made within two years of the decision; instead, SCE proposes that the waiver remain in place until such time as all cost recovery matters associated with the 2017 and 2018 events are fully resolved."[16]

4.4. Determination on SCE's Request to Extend the CS Waiver

At issue is whether the Commission should authorize an extension of the CS Waiver previously granted to SCE, and if so, what terms should be applied to the extension of the waiver.

The Commission previously found that a temporary waiver of SCE's capital structure requirement will not harm the public nor SCE customers because the non-cash charges reported to the SEC do not impact how SCE's existing assets are financed. Moreover, the Commission found that SCE issuance of debt up to the level of any net non-cash charges for the 2017 and 2018 events may be excluded from calculation of its regulatory equity ratio during the waiver period without harming ratepayers because such debt will not be used to finance assets in the rate base.

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[16] Application at 8.

The facts have not changed substantially since the previous authorization for the capital structure waiver was granted in Decision 20-05-005. Further, SCE provides a compelling argument that it is in the public interest for it to preserve financial flexibility while the issue of the pending resolution of cost recovery for the 2017 and 2018 is unresolved. As SCE notes, without an extension of the waiver, it could be put in the position to obtain unneeded equity that would be expensive to redeem.

We approve SCE's request to extend the capital structure waiver that was granted in the 2020 CS Waiver Decision.

We deny SCE's request to remove the time limitation on the authorized capital structure waiver extension. In the 2020 CS Waiver Decision, the Commission signaled the intent to monitor SCE's usage of this capital structure waiver and provide periodic opportunity for the public to intervene on the consideration of a further extension of the waiver. This decision adopts the same two-year time limitation on the extension of the capital structure waiver. The Commission previously spoke on this issue, and new or changed facts have not been presented that would provide a rationale for a deviation from the previous authorization time period. This narrow authorization that constitutes the extension of SCE's capital structure waiver is effective immediately and remains in effect for two years from issuance of this decision or until the Commission adopts a decision regarding SCE's request for cost recovery related to the 2017 and 2018 events, whichever comes first. If the Commission has not made a determination regarding SCE cost recovery for the 2017 and 2018 events within two years of issuance of this decision, SCE should file another application for a waiver from its capital structure pursuant to Rule IX.B.

If within the effective period of this authorized waiver, the Commission resolves, in a final and non-appealable decision, the last of SCE's wildfire cost recovery requests for the 2017 and 2018 events, SCE shall, within ninety (90) days, submit an advice letter informing the Commission that it has returned to its authorized capital structure.

5. Exclusion of Debt to Pay Claims in Excess of Aggregate Net Charges

SCE seeks authorization, effective with the January 1, 2023 cost of capital cycle, to exclude debt from its calculation of the regulatory equity ratio that exceeds the net charges due to the timing difference between the wildfire claims payment and the realization of the cash tax benefits.

The 2020 CS Waiver Decision authorizes SCE to "exclude debt issuance for the purpose of paying claims related to the 2017 and 2018 events from its capital structure compliance calculation to the extent that they are equal to or less than the aggregate net non-cash charges."[17] This applies to the net charge taken in 2018 as well as "and any future charges (net of credits)."[18] Although the amounts originally reported in SCE's 10K filings on February 28, 2019 totaled $1.8 billion, additional charges in subsequent SCE filings have increased the cumulative net noncash charge to $3.8 billion as of December 31, 2021. SCE further notes that the purpose of limiting the debt exclusion to net charges was to prevent SCE from excluding debt from its capital structure that is unrelated to payments of the 2017 and 2018 event claims and that may instead be used to finance rate base.[19]

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[17] D.20-05-005 at 16.

[18] D.20-05-005 at 24.

[19] D.20-05-005 at 16-17.

SCE indicated it understands the phrase "net of credits" to refer to insurance recovery, FERC regulatory assets and other payments that reduce the charges. This would also include tax benefits received. As explained more fully in the testimony of SCE's witness, Mark Childs, in Exhibit SCE-01, the tax benefits associated with the net charges are typically realized in the same period that the wildfire claims are paid. However, because of SCE's current net operating loss position for income tax purposes coupled with the size of the wildfire claims, SCE will not realize, and monetize, any tax benefits associated with these payments until several years after the claims are paid. Therefore, SCE must pay claims associated with the 2017 and 2018 events, but without realizing an offsetting tax credit. This requires SCE to finance with debt the claims payment in excess of the charges. This debt in excess of the net charges will not be used to finance rate base or for any purpose other than paying the 2017 and 2018 event claims.

SCE provided the following table to illustrate the asynchronous timing related to when the tax benefit related to the wildfire payments are expected and when the tax benefits are realized.

Table 1:
Timing of Wildfire Payments and Associated Tax Benefit ($Millions)[20]

Year	*Wildfire Payments	Expected Tax Benefits	Deferral of Tax Benefits Due to NOL's 2020	2021	2022	Recognized Tax Benefits	Net Yearly Borrowing	Cummulative Debt
2020	(497)	139	(139)			-	(497)	(497)
2021	(3,011)	843		(820)		23	(2,988)	(3,485)
2022	(1,655)	431			(37)	394	(1,261)	(4,746)
2023	-		139	169		308	308	(4,438)
2024	-			425		425	425	(4,013)
2025	-			226	37	263	263	(3,750)
Totals	(5,163)	1,413	-	-	-	1,413	(3,750)	

*Wildfire Payments shown are net of insurance proceeds and recoverable FERC amounts. Payments represent actuals through 2021; balance of payments remaining based on SCE's latest accounting charge (Q3 2021) are assumed in 2022 for illustration.

SCE notes that the Commission considered SCE's net operating loss position, noting that SCE "has incurred significant deductible tax costs over the past 10 years and that the deductibility of potential wildfire obligations could limit federal or state tax liabilities for the next few years."[21]

The assigned ALJ issued a ruling on June 22, 2023 seeking additional information from SCE related to this request, specifically how this request is in the public interest and what is the ratepayer impact if the Commission grants the request.

SCE did not provide a specific ratepayer impact, however it indicated that

> [r]equiring new equity now would be premature, given that SCE will not know if the net charges will become a permanent reduction to its equity; therefore, as the cost of debt is substantially lower than the cost of equity, customers will benefit from the lower cost of the temporary debt financing. Financing the wildfire claims and related costs with debt, pending resolution of cost recovery and separate

[20] Exhibit SCE-01 at 3.

[21] D.21-08-036 at 498-501.

> from the financing of rate base, is prudent because it lowers the financing costs and complexities until a final determination on cost recovery is made.
>
> This same logic applies to SCE's specific request to exclude from its capital structure the additional debt needed to cover the full claims and related costs until such time as offsetting tax benefits are realized.[22]

SCE's uncontested position on this issue is reasonable. We grant the request that effective as of the January 1, 2023 new cost of capital cycle, SCE may exclude debt from its calculation of the regulatory equity ratio that exceeds the net charges due to the timing difference between the wildfire claims payment and the realization of the cash tax benefits.

6. This Application Complies with Affiliate Transaction Rule IX.B and is Timely

Rule IX.B also provides that SCE "shall not be considered in violation of this Rule during the period the waiver is pending resolution." SCE has complied with the requirements of Rule IX.B and the CS Waiver Decision. SCE has timely filed this Application within the two-year time period from issuance of the May 7, 2020 CS Waiver Decision. During the pendency of this Application, SCE should thus be deemed to be in compliance with Rule IX.B.

7. Summary of Public Comment

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding.

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[22] July 03, 2023 SCE's response to ALJ ruling seeking more information at 3.

8. Administrative Matters

SCE concurrently served the following exhibit:

- SCE-01: Testimony Supporting Southern California Edison Company's Application for Extension of Waiver of Capital Structure Rule, dated April 20, 2022.

This exhibit is marked for identification and received into evidence as of the date of this decision.

9. Comments on Proposed Decision

The proposed decision of ALJ Brian Stevens in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on __________, and reply comments were filed on _____________ by ________________.

10. Assignment of Proceeding

Alice Reynolds is the assigned Commissioner and Brian Stevens is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. D.20-05-005 granted SCE's initial request for a waiver from the capital structure requirement set forth in Affiliate Transaction Rule IX.B for then current and future charges net of credits stemming from December 2017 Thomas Fire in Ventura County, the subsequent 2018 Montecito Mudslides in Santa Barbara County, and the 2018 Woolsey wildfire in Los Angeles and Ventura Counties, to the extent that they are equal to or less than the aggregate net charges and for two years from issuance of this decision or until the Commission makes a determination on SCE cost recovery for the 2017 and 2018 events, whichever comes first.

2. D.20-05-005 also determined that if the Commission has not made a determination regarding SCE cost recovery for the 2017 and 2018 events within two years of issuance of that decision, SCE should file another application for a waiver from its capital structure pursuant to Rule IX.B.

3. The two-year period of the initial waiver has elapsed, and the Commission has not yet issued a final determination for cost recovery related to the 2017 and 2018 events.

4. SCE has good cause for not yet filing for cost recovery of the claims related to the 2017 and 2018 events.

5. The Commission previously determined that granting a temporary capital structure waiver for a two-year period is appropriate. No compelling rationale for modifying this policy to establish a temporary capital structure waiver for a two-year period has been presented.

6. The most recent update to SCE's capital structure and cost of capital, for test-year 2023 lasting through 2025, was adopted in Decision 22-12-031. In that decision, the Commission adopted a capital structure for SCE comprised of 52.00% common equity, 5.00% preferred equity, and 43.00% long-term debt. In that decision the Commission also adopted a cost of capital rate of return for SCE of 7.44%.

7. Rule IX.B provides that a utility that has filed an application for a waiver of the capital structure condition shall not be considered in violation of the Rule during the period the waiver is pending resolution.

8. SCE's Application reasonably interprets the time period in Rule IX.B to calculate a decrease in their equity ratios and the time period over which the authorized capital structure must be maintained on average.

9. Because of SCE's current net operating loss position for income tax purposes coupled with the size of the wildfire claims, SCE will not realize, nor monetize, any tax benefits associated with related payments until several years after the claims are paid. Therefore, SCE must pay claims associated with the 2017 and 2018 events without simultaneously realizing an offsetting tax credit. This requires SCE to finance, with debt, the claims payment in excess of the charges. This debt in excess of the net charges will not be used to finance rate base or for any purpose other than paying the 2017 and 2018 event claims.

10. There are no remaining issues in this proceeding to resolve.

Conclusions of Law

1. SCE's Application for a an extension of the waiver from the capital structure requirement set forth in Affiliate Transaction Rule IX.B should be approved for current and future charges net of credits stemming from the 2017 and 2018 wildfire and mudslide events and debt issuance for the purpose of paying claims related to the 2017 and 2018 wildfire and mudslide events to the extent that they are equal to or less than the aggregate net charges for two years from issuance of this decision or until the Commission makes a determination on SCE cost recovery for the 2017 and 2018 events, whichever comes first.

2. SCE should submit a Tier 1 advice letter stating that it has returned to its authorized capital structure, or, if applicable, shall file an application including a plan and proposing a time frame over which it will return its cost of capital structure to the level most recently approved by the Commission no more than ninety days after a Commission determination regarding SCE recovery of costs associated with the 2017 and 2018 events

3. Effective as of the January 1, 2023 new cost of capital cycle, SCE should be authorized to exclude debt from its calculation of the regulatory equity ratio that

exceeds the net charges due to the timing difference between the wildfire claims payment and the realization of the cash tax benefits.

4. Exhibit SCE-01 should be received into evidence as of the date of this decision.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company's (SCE) Application for a an extension of the waiver from the capital structure requirement set forth in Affiliate Transaction Rule IX.B is approved for current and future charges net of credits stemming from the 2017 and 2018 wildfire and mudslide events and debt issuance for the purpose of paying claims related to the 2017 and 2018 wildfire and mudslide events to the extent that they are equal to or less than the aggregate net charges for two years from issuance of this decision or until the Commission makes a determination on SCE cost recovery for the 2017 and 2018 events, whichever comes first.

2. Southern California Edison Company (SCE) shall submit a Tier 1 Advice Letter stating that it has returned to its authorized capital structure, or, if applicable, shall file an application including a plan and proposing a time frame over which it will return its cost of capital structure to the level most recently approved by the Commission no more than ninety days after a Commission determination regarding SCE recovery of costs associated with the 2017 and 2018 events

3. Effective as of the January 1, 2023 new cost of capital cycle, Southern California Edison Company may exclude debt from its calculation of the regulatory equity ratio that exceeds the net charges due to the timing difference between the wildfire claims payment and the realization of the cash tax benefits.

4. Exhibit SCE-01 is identified and received into evidence as of the date of this decision.

5. Application 22-04-010 is closed.

This order is effective today.

Dated ____________________________, at Lakeport, California.